

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WP(C).No. 29985 of 2015 (W)

PETITIONER(S):

**BABU V.V AGED 50 YEARS
S/O. VASU, PROPRIETOR, GESCO PIPES
THATHAPILLY, MANNAM PO., PIN - 683 520
NORTH PARAVUR, ERNAKULAM DISTRICT
REPRESENTED HIS POWER OF ATTORNEY HOLDER ANTHONY K.A.
AGED 58 YEARS, S/O.ANTHONY, KANIYODICAL HOUSE
CHUNANGAMVELY, ERUMATHALA PO., PIN - 683 112
ALUVA.**

BY ADV. SRI.K.S.AJAYAGHOSH

RESPONDENT(S):

- 1. SUB INSPECTOR OF POLICE
NORTH PARAVUR POLICE STATION, NORTH PARAVUR PO.
ERNAKULAM DISTRICT. - 683 513.**
- 2. THE CIRCLE INSPECTOR OF POLICE
NORTH PARAVUR, NORTH PARAVUR PO.
ERNAKULAM DISTRICT - 683 513.**
- 3. STATE OF KERALA
REPRESENTED BY SECRETARY TO HOME
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 4. ANILKUMAR C.K
SECRETARY, CPI(M) KOTTUVALLY EAST LOCAL COMMITTEE
KOTTUVALLY PO., NORTH PARAVUR - 683 519.**
- 5. P.R.REGHU
SECRETARY, C.I.T.U. ALANGAD AREA COMMITTEE
KONGORPILLY PO., NORTH PARAVUR - 683 518.**
- 6. SHINEKUMAR
CHULLIKKATTIL HOUSE, NEENDOOR, VADAKKEKARA PO.
NORTH PARAVUR - 683 522.**
- 7. SUJITH E.S
ELUVINGALPARAMBU HOUSE, VELIYATHUNADU WEST
VELIYATHUNADU PO., - 682 313, NORTH PARAVUR.**

8. SAJITH M.C
MUTTAVAYAL HOUSE, CHATHURAKKULAM, THATHAPPILLY PO.
MANNAM
NORTH PARAVUR - 683 520.[DELETED]
[8TH RESPONDENT IS DELETED FROM THE PARTY
ARRAY AS PER ORDER DATED 14.10.2015 IN IA 15003/15.]

9. SANTUS P.C
PULLAYIL HOUSE, GOTHURUTH, PIN - 683 516
NORTH PARAVUR.

R6-R7,R 9 BY ADV. SRI.R.DIVAKARAN
BY STATE ATTORNEY SRI.P.VIJAYA RAGHAAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:A TRUE COPY OF THE NOTICE DATED 25/07/2105 ISSUED BY THE COMPANY TO ALL THE WORKERS WITH ITS ENGLISH TRANSLATION.

EXT.P2:A TRUE COPY OF THE NOTICE DATED 22/08/2015 ISSUED BY THE ASSISTANT LABOUR OFFICER,NORTH PARAUR WITH ITS ENGLISH TRANSLATION.

EXT.P3:A TRUE COPY OF THE COMPLAINT DATED 14/09/2015 SUBMITTED TO THE 1ST RESPONDENT WITH ENGLISH TRANSLATION.

EXT.P4:A TRUE COPY OF THE ACKNOWLEDGMENT OF RECEIPT OF PETITION NO.133771 DATED 14/098/2015 ISSUED BY 1ST RESPONDENT WITH ITS ENGLISH TRANSLATION.

EXT.P5:A TRUE COPY OF THE COMPLAINT DATED 19/08/2015 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT WITH ITS ENGLISH TRANSLATION.

EXT.P6:A TRUE COPY OF THE REPRESENTATION DATED 08/09/2015 SUBMITTED TO THE DISTRICT LABOUR OFFICER, ERNAKULAM BY THE 5TH RESPONDENT WITH ITS ENGLISH TRANSLATION.

EXT.P7:A TRUE COPY OF THE NOTICE DATED 09/09/2015 ISSUED BY THE DISTRICT LABOUR, ERNAKULAM WHICH WAS RECEIVED BY THE PETITIONER ON 14/09/2015 WITH ITS ENGLISH TRANSLATION.

EXT.P8:A TRUE COPY OF THE WRITTEN SUBMISSION DATED 14/09/2015 SUBMITTED TO THE DISTRICT LABOUR OFFICER,ERNAKULAM BY THE PETITIONER WITH ITS ENGLISH TRANSLATION.

EXT.P9:A TRUE COPY OF THE NOTICE NO.1/6413/08 DATED 16/08/2010 ISSUED BY THE DISTRICT INDUSTRIES CENTRE, PALAKKAD.

EXT.P10:A TRUE COPY OF THE NOTICE NO.C3-1123/15 DATED 4/3/2015 ISSUED BY SECRETARY,KOTTUVALLY GRAMA PANCHAYAT WITH ITS ENGLISH TRANSLATION.

EXT.P11:A TRUE COPY OF THE NOTICE NO.PCB/ESC/CO-273/12 DATED 11/3/2015 ISSUED BY ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, ENVIRONMENTAL SUVEILLANCE CENTRE, UDYOGAMANDAL P.O.

RESPONDENT(S)' EXHIBITS

EXT.R6(a): A TRUE COPY OF THE COMPLAINT DT 3.9.2015 AND ITS TRANSLATION.

EXT.R6(b): A TRUE COPY OF THE COMPLAINT DATED 3.9.2015 AND ITS TRANSLATION.

EXT.R6(c): A TRUE COPY OF THE COMPLAINT DATED 18.9.2015 AND ITS TRANSLATION.

Rp

//True Copy//

P.S to Judge

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.P. (C) No. 29985 of 2015

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Dated this, the 21st day of October, 2015

J U D G M E N T

Shaffique, J.

Petitioner has approached this Court seeking police protection for removing the machinery, raw materials, finished goods etc., from their unit.

2. Petitioner submits that he was conducting a unit by name Gesco Pipes at Thathapilly, North Paravur in Ernakulam District. On account of some reasons, he was unable to proceed with the functioning of the unit. The unit was also running in loss. Petitioner therefore decided to shift the unit to a plot at the Kanjikode Industrial Area. There were several employees and most of them have received their benefits, but, respondents 4 to 9 and few others have objected to the compensation offered by the petitioner and had taken up the matter before the labour authorities. In the meantime, when the petitioner attempted to remove the machinery, raw materials and finished goods to the

new unit, it was being obstructed by respondents 4 to 9 and their men. Though complaints were given to the police for necessary police protection, no action was taken by them in that regard and therefore this writ petition is filed.

3. Counter affidavit has been filed by respondents 6, 7 and 9 inter alia stating that the petitioner has entered into an agreement with the workers and has offered gratuity amount, notice pay as well as compensation. Though certain workers have collected their amounts, but as far as the workers who had objected to the same are concerned, they have insisted for payment of compensation, which had been agreed by the petitioner. Since the petitioner did not comply with the terms of the agreement, the matter was taken up before the labour authorities and now it is pending before the Regional Joint Labour Commissioner, Ernakulam.

4. Learned counsel for the petitioner had filed a statement inter alia stating that they have offered certain amounts by way of gratuity as well as one month's wages as compensation in respect of ten persons. They have also stated that if the workers are not prepared to receive the terminal

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benefits, the petitioner is prepared to give employment to all workers at his new industry at Industrial area, Kanjikode on the existing service conditions itself.

5. Learned counsel for the respondents has however filed a statement inter alia stating that in addition to what has been offered, petitioner is liable to pay compensation as well.

6. The fact remains that the issue relating to the claim for compensation and benefits is pending consideration before the Regional Joint Labour Commissioner. Till a decision is taken in the matter, we do not think that the petitioner should be prevented from moving his machinery, raw materials or finished goods from the unit.

7. Learned counsel for the petitioner submits that he is removing the machinery, raw materials and finished goods for the purpose of installing the same at the plant at Kanjikode and that the said machinery, raw materials etc., will be available even if the respondents have a case that sufficient security is not available to settle their claims.

8. Having gone through the statements submitted by either side, it is evident that the total claim of the workers will

only come to ₹11,59,256/- whereas the petitioner has offered gratuity as well as notice pay of one month which is computed at around ₹5,00,000/-. Having regard to the undisputed fact which has arisen in this case and subject to final orders being passed by the Regional Joint Labour Commissioner, we are of the view that the petitioner can be permitted to remove the materials with necessary police protection on the following conditions;

(1) That the petitioner shall offer the admitted amount, i.e., gratuity and notice pay of one month as stated in the statement dated 19/10/2015 to the 10 workers by way of Demand Draft and obtain receipt within a period of one week from the date of receipt of a copy of this judgment.

(2) If the workers refuse to receive the aforesaid Demand Draft, the same shall be deposited before the Regional Joint Labour Commissioner (RJLC), Ernakulam.

(3) If amounts are paid as stated above or deposited before RJLC, on the request of the petitioner, police shall render necessary assistance for enabling the petitioner to remove the machinery, raw materials and finished products.

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(4) Subject to any final orders being passed by the Regional Joint Labour Commissioner in regard to the claim made by the workers, and if any further amount is directed to be paid, petitioner shall pay the amount in terms of the said directions.

(5) Those employees who are willing to accept the employment as offered in the statement is free to do so, in which event, the petitioner has no obligation to pay the compensation as stated above.

Writ petition is disposed of as above.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

21/10/2015

//True Copy//

PS to Judge